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November 13, 2003  
**DEPARTMENT OF ENERGY**  
**OFFICE OF HEARINGS AND APPEALS**

**Hearing Officer's Decision**

Name of Case: Personnel Security Hearing

Date of Filing: June 2, 2003

Case Number: TSO-0059

This Decision concerns the eligibility of XXXXXX (the individual) to hold an access authorization<sup>1</sup> under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." The individual's access authorization was suspended by the Manager of a local Department of Energy (DOE) office pursuant to the provisions of Part 710. Based on the record before me, I am of the opinion that the individual's access authorization should not be restored.

***I. Background***

The individual is an employee of a contractor at a DOE facility. Because of concerns about the individual's conduct during previous employment with a contractor at another DOE facility, personnel security officials (local security office) conducted a Personnel Security Interview (PSI) with the individual on September 19, 2002. The local security office ultimately determined that the derogatory information concerning the individual created a substantial doubt about his eligibility for an access authorization, and that the doubt could not be resolved in a manner favorable to the individual. Accordingly, the manager of the local DOE office suspended the individual's access authorization, and obtained authority from the Director of the Office of Security to initiate an administrative review proceeding.

The administrative review proceeding began with the issuance of a Notification Letter to the individual. *See* 10 C.F.R. § 710.21. That letter included a statement of that derogatory information and informed the individual that he was entitled to a hearing before a Hearing Officer. The individual requested a hearing, and the local DOE office forwarded the individual's request to the

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<sup>1</sup>Access authorization is defined as an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material. 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

Office of Hearings and Appeals (OHA). The Director of OHA appointed me as the Hearing Officer in this matter.

At the hearing convened pursuant to 10 C.F.R. § 710.25(e) and (g), I took testimony from the individual, two managers from the DOE facility at which the individual currently works, a co-worker from the DOE facility where the individual previously worked, and a DOE personnel security specialist. Both the DOE Counsel and the individual submitted exhibits. I closed the record upon receiving a written closing argument from the individual.

I have reviewed and carefully considered the evidence in the record. I have considered the evidence that raises a concern about the individual's eligibility to hold a DOE access authorization. I have also considered the evidence that mitigates that concern. I conclude, based on the evidence before me and for the reasons explained below, that the security concern has not been resolved, and that the individual's access authorization should not be restored.

## **II. Analysis**

### ***A. The Basis for the DOE's Security Concern***

As indicated above, the Notification Letter issued to the individual included a statement of the derogatory information in the possession of the DOE that created a substantial doubt regarding the individual's eligibility for access authorization. In the Notification Letter, the DOE characterized this information as indicating that the individual

- (1) "has deliberately misrepresented, falsified, or omitted significant information from a Personnel Security Questionnaire, a Questionnaire for National Security Positions, a personnel security interview, written or oral statements made in response to official inquiry on a matter that is relevant to a determination regarding eligibility for DOE access authorization, or proceedings conducted pursuant to Sections 710.20 through 710.30" of the Part 710 regulations. *See* 10 C.F.R. § 710.8(f) [hereinafter Criterion F].
- (2) "has engaged in unusual conduct or is subject to circumstances which tend to show that he is not honest, reliable, or trustworthy; or which furnishes reason to believe that he may be subject to pressure, coercion, exploitation or duress which may cause him to act contrary to the best interests of national security." *See* 10 C.F.R. § 710.8(l) [hereinafter Criterion L].

The statements were based on allegations that the individual falsified records, and violated procedures, policy, and safety rules during his employment at another DOE facility, leading to his termination in June 1998, and that he omitted significant information during an October 2000 PSI.

When reliable information reasonably tends to "establish the validity and significance" of substantially derogatory information about an individual, a question is created as to the individual's eligibility for an access authorization. 10 C.F.R. § 710.9(a). The individual must then resolve that

question by convincing the DOE that restoring his access authorization “would not endanger the common defense and security and would be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d).

### ***1. Individual’s Conduct During His Former Employment<sup>2</sup>***

In his previous job, the individual worked as a Radiological Control Technician (RCT) at another DOE site. According to a September 23, 1991 notice of reprimand issued to the individual, he “made false and unauthorized entries in [an air monitoring] Verification Logbook.” DOE Exhibit 7. The individual grieved an initial decision to terminate his employment, and ultimately he was suspended for 29 days. Transcript of Personnel Security Hearing (Tr.) at 22-29. The individual testified at the hearing that he was working with an air monitor

that was associated with an alarm enunciator panel. And I had checked the alarm enunciator panel, written my notations in a logbook, which I had actually written . . . 1400 in the logbook, and it was 1345, . . . I went to another building, gave the keys to another RCT to watch this. . . . When he responded the light on the enunciator panel was lit, and he also noted that the 1400 entry had been made, which would have been an early entry.

Tr. at 23. The individual explained that when he left the building, he went to another building to study for a test. Tr. at 29.

In April 1998, the individual and another RCT were working in a building other than the one in which they normally worked. An employee in that building approached them and asked them if they could do some work for her, stating “that I could get some overtime for them, if necessary, to get the job done.” DOE Exhibit 7. “Some time later,” she asked the individual if “I, or my manager, needed to call his foreman to ask permission for [the individual] to spend time in the building doing my work. [The individual] said that he himself would check with the foreman, and would let me know if I needed to call.” *Id.* However, the individual did not obtain prior authorization from his direct supervisor. DOE Exhibit 5 at 11.

At the individual’s work site, employees had to turn in their time cards by the Thursday during the work week, which began on Monday and ended on Sunday. Tr. at 99. According to the individual, when he turned in his time card on Tuesday, April 28, 1998, he intended to work 28 hours of overtime during the weekend of May 2 and 3, 1998. Tr. at 101. The time card for that week was signed by an RCT supervisor in the building in which his work was requested, “to survey batteries and other items prior to their transfer to another Site facility. . . . Although signature by another RCT supervisor was not encouraged, it was not prohibited at the time.” DOE Exhibit 8 at 1, 2. As it turned out, he only worked 4 hours that weekend, on Saturday, May 2, and performed no work in the building in which he was requested to survey batteries. DOE Exhibit 7 at 20.

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<sup>2</sup> The facts cited in this decision have not been disputed unless otherwise noted.

One of his fellow co-workers testified at the hearing that, because time cards are turned in during the middle of the work week, “then they play catch up on the next Monday. . . . And then you get this flood of what we call time card changes, . . . [on] Monday, Tuesday.” Tr. at 100. The individual did not turn in a time card change on the Monday following the weekend that, according to his time card, he was to work 28 hours but only worked four. On that same Monday, May 4, however, he signed a cover sheet for the surveys performed by his coworker that weekend, and dated the cover sheet May 3, 1998. Tr. at 46, 96.

During a routine review of the facility’s overtime report, a management official “flagged the RCT’s overtime” as questionable. DOE Exhibit 8. Management initiated an investigation, during which the individual was initially interviewed on Wednesday, May 13, 1998. *Id.* What appear to be contemporaneous records of the interview, attached to his notice of termination, state that the individual “was asked if he worked on . . . May 3, 1998, on overtime. He said yes.” *Id.* At the hearing, the individual testified, “I thought I had, and so I did say that. And then . . . I went home that weekend and reviewed all my records. And then Tuesday I came back and then that’s when I told them that there was a discrepancy, . . .” Tr. at 37.

According to the contemporaneous records, on Tuesday, May 19, 1998, the individual requested a meeting with site management, at which “he stated he wanted to ‘come clean.’ He faxed [a time card change] to payroll on May 18, 1998, to deduct pay for 3 overtime shifts he did not work. The days were May 3, 1998 (2 shifts), and May 2, 1998 (1 shift).” At the hearing, the individual explained, “I requested this meeting to tell [a management official], and that’s where you’re getting the come clean statement, was I wanted to make sure that everything was aboveboard and honest with the company like I wanted it to be.” Tr. at 41.

A Notice of Termination of the individual dated June 17, 1998, cites the individual’s submission of time cards for overtime not authorized and not performed, and also that “[f]urther investigation has found that the radiological survey that was produced on May 2 was tampered with and that surveys for May 3 were generated by you even though you admit to not being at work on May 3.” DOE Exhibit 8.

## ***2. October 2000 PSI***

After leaving his former employment, the individual began to work at the DOE site where he is currently employed. On October 18, 2000, in connection with a request to reinstate the individual’s security clearance, a DOE personnel security specialist interviewed the individual. DOE Exhibit 12. Discussing the survey cover sheet he signed on May 4, 1998, and dated May 3, the individual explained, “I think they might have thought that I was trying to say . . . I was doing the physical surveying of an item. And I was not, I was just doing the paperwork of [my coworker’s] efforts to do the physical smearing of an item . . . .” *Id.* at 25. Nonetheless, and despite the explicit statement to the contrary in the individual’s termination notice, the individual stated, “the issue of the survey . . . never came into, uh, being a factor as far as my disciplinary action.” *Id.* at 28.

In his September 19, 2002 PSI, the individual admitted that the way he filled out the survey cover sheets was against policy, DOE Exhibit 5 at 90, and was asked why he was not as forthcoming about the impropriety of his actions during the October 2000 PSI.

[Personnel Security Specialist]: Why would you not present that to her?

[Individual]: Because I would be opening . . . a huge can of worms --

[PSS]: For who?

[Individual]: -- for not only myself but probably hundreds of other people currently working at [my former site].

DOE Exhibit 5 at 91.

The Notification Letter also alleges that in the October 2000 PSI the individual was not forthcoming with information that he worked on Saturday, May 2, 1998. In the September 2002 PSI, the individual disclosed that he had worked 4 hours on that day. DOE Exhibit 1.

Under questioning by the individual at the hearing, the DOE personnel security specialist explained the concern arising from the individual's conduct described above. "[T]he foundation of our program relies upon honesty, reliability and trustworthiness. And I think that you've demonstrated that you are not honest, reliable or trustworthy. So for those reasons we have a concern as to whether or not you should be allowed to have a clearance."

I agree with the personnel security specialist that the individual's conduct raises security concerns that must be resolved if the individual's clearance is to be reinstated. The undisputed facts described above form a pattern that suggests the individual considers himself to be above the rules when they do not serve his needs. In 1991, when he needed to study for a test, he left his assigned duty station 15 minutes before he was supposed to, and filled out a log to indicate that he had not. In 1998, when it was financially advantageous to him, he failed to correct inaccurate time records until confronted with the discrepancy, and even then initially maintained that the records were correct.

On the other hand, I do not believe the individual's omissions in the October 2000 PSI raise concerns as serious, in that he did not intentionally provide the DOE with false information. Nonetheless, the individual's statement in the September 2002 PSI regarding not wanting to "open a can of worms" in the October 2000 PSI is a fairly clear indication that he was intentionally not as forthcoming as he should have been. However, regarding the other alleged omission, I do not find that the individual intentionally left the impression during the October 2000 PSI that he did not work any hours on May 2, 1998. I cannot see what interest the individual would have had in not disclosing that he, in fact, worked four hours on that date. To the extent that his statements in the October 2000

PSI left that impression, I believe it was simply a matter of miscommunication, not a result of any attempt to deceive the DOE.

Taken as a whole, the facts described above do raise legitimate security concerns. In the section that follows, I will consider whether these concerns have been resolved.

### ***B. Whether the Security Concerns Have Been Resolved***

A hearing under Part 708 is held “for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization,” i.e., “to have the substantial doubt regarding eligibility for access authorization resolved.” 10 C.F.R. § 710.21(b)(3), (6). “In resolving a question concerning an individual's eligibility for access authorization,” I must consider

the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the voluntariness of participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors.

10 C.F.R. § 710.7(c).

In a number of opinions, DOE hearing officers have considered the implications of past falsifications by an individual.

All acknowledge the serious nature of falsifying documents. Beyond that, whether the individual came forward voluntarily to renounce his falsifications appears to be a critical factor. *Compare Personnel Security Hearing*, Case No. VSO-0037, 25 DOE ¶ 82,778 (1995), *affirmed* (OSA Feb. 22, 1996) (voluntary disclosure by the individual), *with Personnel Security Hearing*, Case No. VSO-0327 (April 20, 2000), *appeal filed* (falsification discovered by DOE security). Another important consideration is the timing of the falsification: the length of time the falsehood was maintained, whether a pattern of falsification is evident, and the amount of time that has transpired since the individual's admission. *See Personnel Security Hearing*, Case No. VSO-0327 (April 20, 2000), *appeal filed* (less than a year of truthfulness insufficient to overcome long history of misstating professional credentials). *See also Personnel Security Hearing*, Case No. VSO-0289, 27 DOE ¶ 82,823 (1999) (19 months since last falsification not sufficient evidence of reformation from falsifying by denying drug use).

*Personnel Security Hearing*, Case No. VSO-0319, 27 DOE ¶ 82,851 (June 14, 2000), *affirmed* (OSA July 18, 2000). A recurring theme in these types of case is that, in order to adequately resolve

concerns raised by dishonest behavior, there must be a demonstrated pattern of honesty and integrity over a fairly long period of time.

Unfortunately, that positive pattern has not been demonstrated in the present case. In his post-hearing submission, the individual summarizes the issues surrounding the discrepant time cards as follows:

The facts presented before us are that I fully intended on working the shifts that were in question and was subsequently paid for but had failed to remember this until the investigation had started. [The individual's former co-worker testified] that it truly wasn't uncommon for there to be overtime worked and then changed at later dates even up to a couple of months in some instances. Also it was common for individuals to ask for overtime and not be in the direct supervision chain. There were no rules or policies in place at the time of the incident, which prohibited any of these actions.

#### Individual's Post-Hearing Statement at 2.

The individual's statement that he forgot about the overtime that he was to be paid for, but never worked, is simply incredible. Monday, May 4, 1998, was only six days after the individual turned in time cards indicating that he would be working 28 hours of overtime during the coming weekend. That Monday was only one day after the weekend in which he intended to work 28 hours but only worked four. That Monday was also the day that the site's employees routinely submitted "a flood" of corrections to time cards from the previous week. Tr. at 100. Yet, the individual still contends that he did not turn in a correction to his time card because he forgot that he was going to be paid for work he did not do. He claims this, despite the fact that, on that same day, he completed cover sheets for surveys done by his co-worker the previous day, the very survey work which he himself would have done had he worked the 28 hours of overtime indicated on his time card.

The Part 710 regulations describe the decision I have to make in this case as a "comprehensive, common-sense judgment, made after consideration of all relevant information, . . ." 10 C.F.R. § 710.7(a). In this case, my best common-sense interpretation of the individual's current take on this most serious charge leads to two possibilities. One is that the individual understands the concerns raised by his behavior, but is now trying to minimize that behavior, if not outright mischaracterize it as comporting with the rules and policies of his former workplace. If true, and the individual's minimizations and mischaracterizations are intentional, there surely has been no pattern of demonstrated honesty and integrity on the individual's part that would resolve the legitimate security concerns raised in this case.

It is, of course, also possible that the individual is not deliberately lying about his intentions regarding the time card incident. It is possible that the individual truly believes at present that his intentions were honest, and that in any case that there were no rules or policies prohibiting his actions. However, if this is true, then the individual clearly remains a security concern in that he has still not come to terms with the impropriety of his actions. Many times during this proceeding,

the individual has contended that his actions at his former job were not out of the norm for his workplace. *See, e.g., Tr.* at 89-102.<sup>3</sup> There are two problems with this line of reasoning. First, if true, this may raise serious concerns about his former workplace, but it in no way mitigates the security concerns raised by the individual's actions. Second, there was credible testimony from the individual's former co-worker that conduct at his former workplace sometimes went against established rules and policies. *Id.* However, there is no evidence supporting the individual's assertion that his actions surrounding the time cards (i.e., waiting until an investigation against him had begun, and even then claiming that he had worked the overtime in question) was at all common. *See Tr.* at 101-02. That he would make such an assertion, and in addition claim that his actions violated no rules or policies, is troubling to say the least.

### **III. Conclusion**

Upon consideration of the record in this case, I agree with the local security office that there is evidence that raises a substantial doubt regarding his eligibility for a security clearance, and I do not find sufficient evidence in the record that resolves this doubt. Therefore, because I cannot conclude that restoring the individual's access authorization would not endanger the common defense and security and would be clearly consistent with the national interest, it is my opinion that the individual's access authorization should not be restored. 10 C.F.R. § 710.27(a). The individual may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Steven J. Goering  
Hearing Officer  
Office of Hearings and Appeals

Date: November 13, 2003

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<sup>3</sup> The individual also contends that he was terminated in retaliation for making safety-related disclosures. *See, e.g., Individual's Post-Hearing Submission* at 2. However, the purpose of this proceeding is not to determine whether the individual was wrongfully terminated. Rather, the focus is the security concerns raised by the underlying conduct, regardless of what disciplinary action, if any, that conduct led to.